Public Health Appeal Board

2015 Annual Report

Prepared for the Minister of Health

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PHAB
Public Health Appeal Board

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Role of the Public Health Appeal Board

The Board was established under section 3 of the *Public Health Act*. Its mandate, role and responsibilities are also set out in the *Alberta Public Agencies Government Act*, *Public Health Act Waiver Regulation*, *Public Inquiries Act* and the *Order in Council* appointing the Board members.

The Board consists of 5 members and 3 members constitute a quorum at a meeting or hearing of the Board.

The duties of the Board include hearing appeals from individuals who have been directly affected by an order issued under section 62 of the *Public Health Act* or a decision to issue, cancel, suspend or refuse to issue a licence, permit or other approval provided for in the regulations and any other decision in respect of which an appeal is permitted under the regulations.

The Appellant must be directly affected by an order or a decision and feel aggrieved by that order or decision.

Most appeals submitted to the Board relate to an order issued under section 62 of the *Public Health Act*. The order is issued after an Executive Officer has inspected a private or public place and has probable grounds to believe that a nuisance exists or that there has been a contravention of the Act or its regulations.

An order may include the following:

- Requiring the vacating of the place;
- Declaring the place or any part of it to be unfit for human habitation;

- Requiring the closure of the place;
- Requiring the doing of work specified in the order;
- Requiring the removal from the place anything that the order states causes a nuisance;
- Requiring the destruction of anything specified in the order;
- Prohibiting or regulating the selling, offering for sale, supplying, distributing, displaying, manufacturing, preparing, preserving, processing, packaging, serving, storing, transporting or handling of any food or thing in, on, to or from the place.

The Board may confirm, reverse or vary the order or decision or may refer the matter to Alberta Health Services for further consideration and redetermination. The Board provides written decisions to Alberta Health Services and the Appellant.

The Board is guided by the principals of administrative law and natural justice as they apply to quasi-judicial tribunals.

The Board is required to make a report each year to the Minister summarizing generally its activities and affairs in the preceding year. This report covers the activities and affairs of the Board from January 1, 2015 to December 31, 2015.

Board Members for 2015

Julia Jones – Chair

Julia Jones has a Bachelor of Social Work Degree and a Law Degree from the University of Calgary. She practices law in Calgary and was the assistant vice president for First Canadian Title Company for several years. She has also worked as a social worker and a child welfare worker for the Government of Alberta. She served as a member of the Legal Aid Review Committee for ten years. She was appointed to the Calgary and South Mental Health Review Panel in 2014 and as Chair of the Public Health Appeal Board in April 2014.

Ron Everard, Q.C. – Vice Chair

Ron Everard, now an inactive member of the Law Society of Alberta, has more than 30 years of legal experience. As a practicing lawyer, Ron acted either as an advocate, mediator, or arbitrator in a variety of cases. He appeared as counsel at all levels of the Alberta courts, and conducted numerous trials and appeals. Ron was appointed a Queen's Counsel in 2004. Throughout his legal career Ron lectured and instructed at seminars and conferences in the areas of Injury Law, Insurance, Alternate Dispute Resolution and Advocacy, for various legal and professional organizations.

Ron served as a Bencher of the Law Society of Alberta from 2004-2012 and as a Trustee for the Calgary District Hospital Group, as a Member of the Development Appeal Board for the City of Calgary, and as a Member of the Law Enforcement Review Board (LERB). In 2009, Ron was appointed a Commissioner of the Appeals Commission of the Workers' Compensation Board. Ron was appointed Vice-Chair of the Public Health Appeal Board in April 2014.

Terry Bunce

Terry Bunce has been active with a variety of theatre, dance, and community service organizations for several decades. His work on quasi-judicial panels is a logical extension of his community activism and social conscience. He has served in adjudicative positions for the past 13 years including the Appeals Commission for Workers' Compensation, Persons with Developmental Disabilities Appeal Secretariat, and as a Hearing Adjudicator for inmate disciplinary matters in Alberta correctional facilities. Terry enjoys the consensus-based decision-making format of the Board and considers it a privilege to be able to make a positive contribution to the community through the decisions rendered. Mr. Bunce was appointed as a Board member from February 2012 until March 2015.

Linda Klein

Linda Klein has had a long and commendable career with the Government of Canada, mainly with the Correctional Service of Canada, retiring with over 32 years of service. She worked as a Parole Officer within a federal institution and towards the last decade of her employment, as a Parole Officer in Calgary, supervising federally released offenders. While working fulltime, she obtained her post-secondary education through Lethbridge College. Shortly after her retirement from the Correctional Service in 2007, she was appointed as a Board Member with the Parole Board of Canada for a three year term. In 2010, she was reappointed for another three year term. She continues her tribunal experience with the Public Health Appeal Board and the Criminal Injuries Review Board. Her entire career illustrates a commitment to serving the public and protecting society. Ms. Klein also has extensive experience as a member/executive of community boards and events.

David Thomas

David Thomas is a lawyer who practised law in Edmonton and Drayton Valley for 24 years. During this time he served 8 years on Drayton Town Council. After retiring in 1995, he began raising cattle and working part time for various municipal and government boards, including the Municipal Government Board for 12 years and currently for the Surface Rights and Land Compensation Board. David is also a director for the Battle River Rural Electrification Association and the Lamont County Development Appeal Board. He and his wife, Jane Hurl, continue to raise a small number of cattle on their farm. He was appointed to the Public Health Appeal Board in April 2014.

Linda Cloutier – Alternate Vice Chair

Linda Cloutier has actively advocated for individuals in all capacities through her extensive volunteerism in a myriad of organizations in the communities where she has resided. She spent many years serving the public in educational and private sectors in administrative and financial positions. Mrs. Cloutier also served her community as a Justice of the Peace for the Criminal Courts as well as Town Councillor. The training and experience she garnered dealing with the *Municipal Government Act* and member of the Assessment Review Board as well as the *Criminal Code* and preliminary hearings was a natural lead-in for her to pursue openings in the administrative justice field. She was appointed to the Persons with Developmental Disabilities Appeal Panel in 2006 and since 2010 has served as the Chair. In March 2014, Mrs. Cloutier was appointed to the Calgary and South Mental Health Review Panel and in April 2014 to the Public Health Appeal Board.

Summary of Board Activities 2015

Appeals received in 2015

Number of Appeals received, carried forward from previous years and to the next year	
Number of Notices of Appeal received by the Board in 2015	18
Number of Appeals carried over from previous years	0
Number of Appeals carried over to 2016	8
Total number of Appeals completed in 2015	10

Compared to 2012, 2013 and 2014

Number of Appeals received, carried forward from previous years and to the next year	2012	2013	2014	2015
Notice of Appeals received	27	29	15	18
Carried over from previous years	10	3	5	0
Carried over to the next year	3	5	0	8
Appeals completed	34	27	20	10

The total number of appeals completed in 2015 was 10 which was a 50% decrease from the total number of appeals completed in 2014, 63% decrease from 2013 and a 70% decrease from 2012.

The Board received a slight increase, 17%, in Notices of Appeal over 2014. However, the 18 Notices of Appeal received in 2015 was a significant decrease of 38% from 2013 and 33% from 2012.

Stay Hearings

The *Public Health Act* allows appellants to apply for a stay of the order or decision prior to the appeal hearing. Of the 10 appeals that were completed in 2015, 5 appellants requested a stay hearing when they served their Notice of Appeal on the Board. Only 4 of the stay applications proceeded to a stay hearing, the other one was withdrawn prior to a stay hearing being completed. Of the 4 stay applications that proceeded to a stay hearing, the Chair granted 2 partial stay orders. Of the 8 appeals that were carried over to 2016, 2 appellants requested a stay hearing when they served their Notice of Appeal on the Board. The two stay applications proceeded to a stay hearing in 2015 and both were denied by the Chair.

Legal Representation for Appellants and Respondent

Legal counsel represented Appellants in 1 of the 10 appeals completed in 2015 and legal counsel (in-house or retained) represented the Respondent, Alberta Health Services, in 10 appeals in 2015.

Appeals Resulting in a Hearing

After an appeal is submitted by the Appellant, the Board sets a hearing date to hear the submissions of the Appellant, Alberta Health Services and any Intervenors. The appeals submitted by the Appellants frequently do not proceed to a hearing. In 2015, 30% of the completed appeals resulted in a hearing and 70% did not proceed to a hearing.

Appeals Resulting in a Hearing vs no Hearing	**2015**
Hearings completed by the Board	3
Appeal did not progress to a hearing	7
Appeals completed in 2014	10

Compared to 2012, 2013 and 2014

Appeals Resulting in a Hearing vs no Hearing	2012	2013	2014	2015
Hearings completed by the Board	8	13	8	3
Appeal did not progress to a hearing	26	14	12	7
Total Appeals completed	34	27	20	10

The total number of appeals that proceeded to a hearing by the Board in 2015 was 62% less than in 2014, 77% less than in 2013 and 62% less than in 2012. The most significant trend appears to be the number of appeals received by the Board that do not progress to a hearing. The number of hearings that did not progress to a hearing was 70% in 2015, 60% in 2014, 52% in 2013 and 76% in 2012.

Number of Days from Notice of Appeal Received and Hearing

The *Public Health Act* requires the Board to hear the appeal within 30 days after receiving the notice of appeal.

Number of Days from Notice of Appeal received and Hearing	2015
Average	35*
Median	37*

**Of the 3 Notices of Appeal that went to Hearings, two were heard on the same day which was 37 days after the Notice of Appeal was received, and one was heard on the 30th day from receiving the Notice of Appeal.*

Hearing Results in 2015

The Board may confirm, reverse or vary the order or decision being appealed or may refer the matter to Alberta Health Services for further consideration and redetermination.

Hearing Results in 2015	
Board confirmed order	1
Board varied order	2
Board reversed order	0
Board referred matter back to AHS	0
Total Hearings completed in 2015	3

Compared to 2012, 2013 and 2014

Hearing Results	2012	2013	2014	2015
Board confirmed order	8	8	4	1
Board varied order	0	3	1	2
Board reversed order	0	3	3	0
Board referred the matter back to AHS	0	3	0	0
Total number of hearings	8	13	8	3

In 2015, 33% of the hearings resulted in the Board confirming the order compared to 50% in 2014, 62% in 2013 and 100% in 2012.

Number of Days from Hearing until Decision Issued by Board

Number of Days from Hearing until Decision Issued by Board	2015
Average	34
Median	34

Appeals Resulting in No Hearing

When an appeal does not progress to a hearing, the primary reason is that an Appellant withdraws the appeal prior to the hearing date being set or the hearing commencing.

Appeals Resulting in No Hearing	2015
Appellant withdrew appeal or abandoned the appeal	7
Appeal period expired and was not extended by the Board	0
Board found there was no order issued to appeal	0
Appeals that did not progress to a hearing in 2014	7

Compared to 2012, 2013 and 2014

Appeals that did not proceed to a Hearing	2012	2013	2014	2015
Appellant withdrew or abandoned appeal	23	13	11	7
Appeal period expired and was not extended by Board	2	0	1	0
No order issued to appeal	1	1	0	0
Total Appeals that did not proceed for an Hearing	26	14	12	7

Subject Matter of Appeals

The majority of appeals completed by the Board in 2015 related to rental accommodation/ housing: 67%.

Subject Matter of 2015 Appeals	2015	%
Rental accommodation/housing	2	67
Pools/Leisure facilities	0	0
Food Establishments	1	33
Water/wells	0	0
No order to Appeal	0	0
Total	3	100

Compared to 2014

Subject Matter of Appeals	2014 %	2015 %
Rental accommodation/housing	85	67
Pools/Leisure facilities	0	0
Food Establishments	10	33
Water/wells	5	0
No order to Appeal	0	0
Total	100	100

Appeals by Zone

Notice of Appeals submitted to the Board in 2015 from the 5 Alberta Health Services' Districts.

Appeals by Zone	2015
Zone 1 South	0
Zone 2 Calgary	5
Zone 3 Central	1
Zone 4 Edmonton	9
Zone 5 North	3
Totals	18

Percentage of Appeals submitted by Zone

Appeals by Zone - %	2015
Zone 1 South	0
Zone 2 Calgary	28
Zone 3 Central	5
Zone 4 Edmonton	50
Zone 5 North	17
Totals	100%

Other Board Activities

- Performance assessments of the Board and individual Board Members were implemented by the Board as required by the *Alberta Public Agencies Governance Act*.
- A website for the public and potential appellants was created by the Board that includes information about the Public Health Appeal Board, related legislation and case law, the Board's appeal process and Board Decisions.